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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RAYMOND HERNANDEZ, Defendant and Appellant.	B213573 (Los Angeles County Super. Ct. No. TA096425)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur M. Lew, Judge. Affirmed.

Law Offices of Pamela J. Voich and Pamela J. Voich for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon and Joseph P. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Following denial of his motion to suppress evidence pursuant to Penal Code section 1538.5, defendant and appellant Raymond Hernandez entered a plea of no contest to a charge of short-barreled shotgun or rifle activity in violation of Penal Code section 12020, subdivision (a)(1). Defendant was sentenced to the midterm of two years in state prison, execution of the sentence was suspended, and defendant was placed on formal probation for three years.

In this timely appeal, defendant argues the trial court erred in denying his motion to suppress evidence. We affirm.

STATEMENT OF FACTS FROM THE MOTION TO SUPPRESS

Deputy Sheriff Clifford Jones was involved in pursuit of an automobile in the City of Carson on March 27, 2008. David Hernandez, an occupant of the car, threw a gun out the window during the pursuit. The car stopped in front of his residence, which he entered. An air unit advised Deputy Jones that an older male Hispanic came outside, looked at the air unit, and reentered the residence.

The four occupants of the residence were ordered out, including David Hernandez and defendant. After a protective sweep of the residence, which proved negative, all deputies exited the home.

Deputy Mat Taylor read a consent to search form to Virginia Hernandez, defendant's mother. He first read the form to her in English and then explained it to her in Spanish. A son or grandson also explained the consent form in Spanish. Deputy Taylor told her they would search for weapons, suspects, and contraband. He saw her sign the form. Virginia Hernandez appeared to understand what she was told about the consent form. She told Deputy Taylor she was the homeowner. She never said anyone else was the owner or made payments on the house. She did not say there were parts of the house to which she did not have access.

Defendant said his room was in the back, northeast portion of the home. Deputy Jones found the door to defendant's room was open. Deputy Jones recovered a sawed-off shotgun from a location under defendant's mattress.

Virginia Hernandez at first testified she did not see or sign the written consent to search, but later changed her testimony to say she agreed the officers could search to see if anyone else was in the house. She recalled speaking to officers, but was not asked if she was the homeowner. Virginia Hernandez lived in the house for 30 years, as had defendant. Defendant always lived in the same room, which had a lock on the door. She does not have a key and enters with his permission. He pays $100-$200 per month to help her out. Defendant and another son pay the utilities and taxes on the house. Her name and her husband's name are on the mortgage of the house.

DISCUSSION

Defendant argues the trial court erred in denying his motion to suppress the shotgun found in his bedroom. Defendant reasons that he had an expectation of privacy in the room and that his mother lacked the authority to consent to the search. We disagree.

Standard of Review

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597; *People v. Lawler* (1973) 9 Cal.3d 156, 160.)" (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

The Law of Consent

Consent is an exception to the Fourth Amendment's proscription against warrantless searches. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 181 (*Rodriguez*); *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.) "A warrantless search may be reasonable not only if the defendant consents to the search, but also if a person other than the defendant with authority over the premises voluntarily consents to the search. (*United States v. Matlock* (1974) 415 U.S. 164, 170-171 [person sharing a bedroom with defendant had authority to consent to a search of the premises and diaper bag found therein]; see also *Frazier v. Cupp* (1969) 394 U.S. 731, 740 [cousin had authority to consent to search of the defendant's duffel bag, which both men used and which had been left in the cousin's home].)" (*People v. Jenkins* (2000) 22 Cal.4th 900, 971-972.)

In *Rodriguez*, the Supreme Court recognized that a search in reasonable reliance on another's apparent authority to consent does not offend the Fourth Amendment. "It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government -- whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement -- is not that they always be correct, but that they always be reasonable." (*Rodriguez, supra*, 497 U.S. at p. 185.) "Whether the basis for such authority exists is the sort of recurring factual question to which law enforcement officials must be expected to apply their judgment; and all the Fourth Amendment requires is that they answer it reasonably. The Constitution is no more violated when officers enter without a warrant because they reasonably (though erroneously) believe that the person who has consented to their entry is a resident of the premises, than it is violated when they enter without a warrant because they reasonably (though erroneously) believe they are in pursuit of a violent felon who is about to escape." (*Id.* at p. 186.)

The Trial Court's Finding is Supported by Substantial Evidence

The trial court ruled Virginia Hernandez had apparent authority to give consent, while expressing skepticism at some of her testimony. This ruling is amply supported by substantial evidence.

Viewed in the light most favorable to the express and implied findings of the trial court, the record reflects that Virginia Hernandez identified herself to Deputy Taylor as the owner of the residence. The consent form was explained to her in English by Deputy Taylor and then in Spanish by the deputy and a relative. She signed the form without giving any indication to the deputy that she lacked full control of the residence. The deputies reasonably relied upon her apparent authority to give an unqualified consent to search.

Defendant's argument that Virginia Hernandez lacked authority to consent, because defendant's room had a lock on the door and she only entered with defendant's permission, is without merit. The trial court questioned the veracity of her testimony, and under the applicable standard of review, we need not afford any weight to her description of her authority to enter defendant's room. But more importantly, there is no evidence Virginia Hernandez advised the deputies of her purported limited authority to enter defendant's room at the time she gave consent to search. Even if her testimony were accurate in describing the arrangements within the home, it does nothing to undercut the deputies' reasonable reliance on the unrestricted consent given by the person claiming to be the property owner of the premises to be searched.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.